

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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YELENA LYSYAK,

Plaintiff,

- against -

HOME ATTENDANT SERVICE
OF HYDE PARK, INC.,

Defendant.

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ORDER

18-CV-0259 (KAM) JO)

James Orenstein, Magistrate Judge:

In their respective letters asking to withdraw from the lawsuit, three potential opt-in plaintiffs all write: "I do not want to lose my job." Docket Entries 96, 97, 102. The court has also received letters from many more of the defendant's employees who, while not explicitly writing that they fear for their jobs, go out of their way to ask not to join this lawsuit – and use many of the same phrases as one another in doing so. *See* Docket Entries 67-69, 75-91, 98-101, 103.

The fact that some of the letter writers express a concern for losing their jobs raises the possibility that someone has incorrectly informed them, or given them reason to believe, that they would risk termination or some other form of illegal retaliation if they choose to join this action. The circumstances of the letters that do not explicitly mention such a concern are just as troubling. That their authors have gone to the trouble of writing letter to ask to stay out of the lawsuit at all is altogether inconsistent with my experience in many other similar cases. It is also entirely unnecessary, as the notice disseminated to the letter writers and their colleagues as potential opt-in plaintiffs repeatedly makes clear. *See* Docket Entry 45-1. Viewed as a group, the letters suggest at least a possibility that someone has unlawfully sought to impede the administration of justice in this case by using improper means to dissuade the defendant's employees from seeking to vindicate their legal rights. I will discuss these concerns with counsel, and how best to address them, at the next conference on February 20, 2019, at 2:00 p.m.

I respectfully direct the three workers who have expressed concerns about losing their jobs – Marina Zhuy, Lyudmila Matlina, and Sultanov Tuygun – to appear in person at the next conference so that I may discuss with them the reason for expressing such concerns. To minimize the possibility that discussion of this order may confuse or alarm the three individuals or needlessly cloud the record, I respectfully direct the Clerk to send a copy of this order and of the attached letter by mail and text to each of them,¹ and I further order that no party, counsel, or other representative of any party is to have any communication about this case, directly or indirectly, with any of the defendant's employees prior to the next scheduled conference.

Dated: Brooklyn, New York
February 12, 2019

¹ I respectfully direct each party's counsel to immediately submit a letter under seal providing a mailing address and text-compatible telephone number for each of the three individuals named above, to the extent such information is available.

ADDENDUM

Letter to Marina Zhuv, Lyudmila Matlina, and Sultanov Tuygun

Dear [Full Name]:

My name is James Orenstein. I am a United States Magistrate Judge, and I am overseeing the preliminary part of a lawsuit between Yelena Lysyak and Home Attendant Service of Hyde Park, Inc. I recently authorized the parties in the case to contact you by mail, telephone, and text, to notify of your right to join the lawsuit as a plaintiff if you wish to do so. In those messages, the parties clearly and repeatedly stated that if you did not wish to become a party in this case, you did not have to do anything – you would only become a party if you wanted to do so and returned a form indicating that preference.

Earlier this week, the court received a letter in which you wrote that you do not want to lose your job and asked not to become a plaintiff. We will of course respect your decision. However, your letter raised some concerns about the conduct of the parties and possibly others that I must discuss with you. I have therefore issued an order that requires you to appear in person at court proceeding on February 20, 2019, at 2:00 p.m. The hearing will be held in the United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York, in Courtroom 11D South on the 11th floor.

I want to emphasize that you have no reason to be concerned for yourself in attending the hearing. No action is being taken against you by the court or any party, and your employer may not fire you, reduce your wages, or take any other action against you for appearing in court or for choosing to join this lawsuit. I simply wish to ask you questions (and the parties' lawyers may also wish to do so) about how you learned about this lawsuit, why you thought it was necessary to write a letter saying that you do not want to join it, and why you expressed a concern about losing your job. Again, you cannot legally be fired for joining or refusing to join this lawsuit. You are of course free to have an attorney represent you at the conference, but you are not required to do so, and I respectfully order that you appear in person whether or not you are represented by counsel.

I am sorry to have to ask you to come to court, and I regret the inconvenience it will cause you. I look forward to speaking with you on February 20th.

Very truly yours,

James Orenstein